

in 1998 or later about his back hurting from his work. Claimant also contends he told the production manager, Paul Jensen, in approximately 1998 that his back was hurting too much for him to operate his press without a helper. Accordingly, claimant argues respondent had notice of the injuries to claimant's neck and back.

Claimant also contends that the Application for Hearing initially filed with the Division on March 29, 2000, was legally sufficient to satisfy the notice requirements of the Workers Compensation Act as the application indicated claimant's accident occurred from repetitive work activities through his last day of employment. Claimant argues that an injured employee is neither required to diagnose his condition nor required to list every body part injured when providing notice to an employer. Instead, claimant argues he is only required to provide notice of an accident.

The only issue before the Board on this appeal is whether claimant provided respondent with timely notice of the accident as required by K.S.A. 44-520 (Furse 1993).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the file compiled to date, the Board finds and concludes:

The preliminary hearing Order should be affirmed.

Claimant worked for respondent as a pressman for approximately 25 years. In 1980, claimant had a fusion in his low back from approximately L4-5 through S1. Following that surgery, claimant had a good recovery but began noticing mild symptoms in the late 1980s. When claimant's helper left in approximately 1996, claimant was then required to do additional physical activities, including all the bending required in loading paper into the press and all the lifting required in changing the rollers in the press. Claimant's back symptoms became more severe. Claimant then began seeking additional medical treatment for his back from his personal physician, Dr. Craig Parman.

Although claimant was experiencing increasing back difficulties, those symptoms were not at the forefront of claimant's physical difficulties as he was also developing a torn rotator cuff in his right shoulder, experiencing a left knee that was giving way, having symptoms in his right knee, and having symptoms of carpal tunnel syndrome in his upper extremities.

According to claimant, he told his foreman, Dick Morrison, in 1998 or later that he was having significant back pain from loading paper in the press and from changing the rollers. Claimant also testified that he told Paul Jensen, the production manager, shortly before Mr. Jensen's retirement that his back was hurting so much that he did not believe he could handle the paper without having a helper. Mr. Jensen testified that he retired in 1998.

When claimant ultimately left work due to his injuries in March 2000, he spoke with respondent's bookkeeper and front office worker Bonnie Jacobs about filing a workers compensation claim for his upper and lower extremities. They did not discuss claimant's back as claimant thought it was an old injury. Claimant then filed an Application for Hearing with the Division of Workers Compensation on March 29, 2000, that alleged a series of accidents each and every day at work through March 20, 2000. That application indicated claimant had injuries to his bilateral upper extremities, bilateral lower extremities and right shoulder.

On March 27, 2000, claimant spoke with respondent's insurance carrier's claims adjustor, Brenda McDermott. During that conversation, the adjustor asked claimant if he had an earlier workers compensation claim for his back as he had mentioned that he had received medical treatment for his back. Claimant did not answer the question asked, but he responded by saying that he had experienced back pain from the bending at work. The adjustor asked and claimant answered, as follows:

Q. (Ms. McDermott) Okay, you hadn't had a work comp claim for your back or anything, you had said something about that Dr. Parman had treated you for your back?

A. (Claimant) Well just back pain from the bending, but that's, gosh everybody has back pain.¹

Later, in approximately June 2000, claimant learned from Dr. Parman that his work had not only aggravated his preexisting low back condition but the work had also caused a new injury in the thoracic spine. Claimant also learned that workers compensation claims were appropriate for old injuries or preexisting conditions that are aggravated by work activities. On July 12, 2000, claimant filed an amended Application for Hearing with the Division of Workers Compensation alleging repetitive injuries to his neck and back.

Claimant's former supervisor, Dick Morrison, died in October 2001 without testifying in this claim. But Carolyn Black, one of respondent's owners, testified she had spoken with Mr. Morrison before his death and that he was willing to testify "we [respondent] had no notice on the back."²

The Workers Compensation Act provides that an injured worker must provide the employer with notice of an accident within 10 days following a work-related accident. But that 10 days may be extended to 75 days upon a showing of just cause. K.S.A. 44-520 (Furse 1993) provides:

¹ February 19, 2002 preliminary hearing transcript; claimant's exhibit 8, at page 21.

² February 19, 2002 preliminary hearing transcript, at page 38.

Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary. The ten-day notice provided in this section shall not bar any proceeding for compensation under the workers compensation act if the claimant shows that a failure to notify under this section was due to just cause, except that in no event shall such a proceeding for compensation be maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident unless (a) actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary as provided in this section, (b) the employer was unavailable to receive such notice as provided in this section, or (c) the employee was physically unable to give such notice.

Judge Clark determined that claimant provided respondent with timely notice of the accident through the conversations claimant had with his immediate supervisor, Mr. Morrison. The Board agrees. Claimant advised Mr. Morrison on an unspecified date or dates between 1998 and March 15, 2000, that his back was hurting from throwing paper at work. As the pressroom foreman, Mr. Morrison had knowledge of the physically demanding work claimant performed on a day-to-day basis. The Board finds that the information Mr. Morrison possessed was sufficient to place a reasonable person on notice that claimant's work was, at the very least, aggravating his previously operated back. Accordingly, respondent had notice of the ongoing aggravation to claimant's back while claimant continued to perform his physically demanding job duties. The Board concludes claimant has satisfied the notice requirements of the Act.

WHEREFORE, the Board affirms the March 4, 2002 preliminary hearing Order entered by Judge Clark.

IT IS SO ORDERED.

Dated this ____ day of June 2002.

BOARD MEMBER

c: Garry L. Howard, Attorney for Claimant
Gary K. Albin, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Philip S. Harness, Workers Compensation Director